

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**DAWN E. MATNEY**

§  
§  
§  
§

**V.**

**A-10-CA-213 SS**

**MICHAEL J. ASTRUE,**

§

**REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE SAM SPARKS  
UNITED STATES DISTRICT JUDGE**

Before the Court is Plaintiff's Unopposed Motion to Dismiss Without Prejudice (Clerk's Docket No. 10). The Magistrate Court submits this Report and Recommendation to the United States District Court pursuant to 28 U.S.C. §636(b), Federal Rule of Civil Procedure 72 and Rule 1(h) of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges.

**I. BACKGROUND AND ANALYSIS**

On March 26, 2010, Plaintiff Dawn E. Matney ("Plaintiff") filed the above-styled suit appealing the Social Security Commissioner's decision that Plaintiff was not disabled within the meaning of the Social Security Act. The District Court referred the matter to the undersigned for a Report and Recommendation pursuant to 28 U.S.C. § 636(b).

Plaintiff has filed an Unopposed Motion to Dismiss Without Prejudice (Clerk's Docket No. 10), requesting that the Court dismiss her case. Plaintiff's present attorney, who did not represent Plaintiff during the administrative process, now states that after reviewing the evidence in the case, "there is insufficient evidence to presently support the appeal of denial of Title II benefits under the Social Security Act." Plaintiff's Brief at 1. Because the Motion is unopposed and appears meritorious, the Magistrate Court RECOMMENDS that the District Court GRANT the Motion.

**II. RECOMMENDATION**

The Magistrate Court RECOMMENDS that the District Court GRANT Plaintiff's Unopposed Motion to Dismiss Without Prejudice (Clerk's Docket No. 10).

**III. WARNING**

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections.

*Battles v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within ten (10) days after the party is served with a copy of the Report shall bar that party from de novo review by the district court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-153 (1985); *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1428-30 (5th Cir. 1996) (en banc).

To the extent that a party has not been served by the Clerk with this Report & Recommendation electronically pursuant to the CM/ECF procedures of this District, the Clerk is directed to mail such party a copy of this Report and Recommendation by certified mail, return receipt requested.

SIGNED this 20<sup>th</sup> day of July, 2010.

  
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ANDREW W. AUSTIN  
UNITED STATES MAGISTRATE JUDGE